

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

BYRON DENELL VAUGHN

§

v.

§

CIVIL ACTION NO. 6:08cv314

DIRECTOR, TDCJ-CID

§

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Petitioner Byron Vaughn, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of the legality of his conviction. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Vaughn was convicted of assault - family violence, receiving a sentence of seven years in prison. In his habeas corpus petition, he said that the prosecutor failed to turn over an affidavit of non-prosecution signed by the alleged victim, the jury committed misconduct, he received ineffective assistance of counsel, and the evidence was insufficient to support the conviction. The Magistrate Judge ordered the Respondent to answer and reviewed copies of the state court records. Vaughn did not file a response to the answer.

After review of the pleadings and records, the Magistrate Judge issued a Report on April 2, 2009, recommending that the petition be dismissed. The Magistrate Judge carefully analyzed each of Vaughn's claims and determined that they lacked merit. The Magistrate Judge also recommended that Vaughn be denied a certificate of appealability *sua sponte*.

Vaughn received a copy of the Magistrate Judge's Report on or before April 10, 2009, but filed no objections thereto; accordingly, he is barred from *de novo* review by the district judge

of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge dated March 30, 2009 (docket no. 9) is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus be and hereby is DISMISSED with prejudice. It is further

ORDERED that the Petitioner Byron Vaughn is hereby DENIED a certificate of appealability *sua sponte*. Alexander v. Johnson, 211 F.3d 895, 898 (5th Cir. 2000). Finally, it is

ORDERED that any and all motions which may be pending in this civil action are hereby DENIED.

So ORDERED and SIGNED this 28th day of May, 2009.

A handwritten signature in black ink, appearing to read "LEONARD DAVIS", is written over a horizontal line. The signature is fluid and cursive, with a large loop on the left and a smaller flourish on the right.

**LEONARD DAVIS
UNITED STATES DISTRICT JUDGE**